CF0000061118

Division Bench (Criminal) (2)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRI.APPEAL NO. 638 /1996.

APPELLANT : (Jail) Mahesh Prasad S/o Likhori, Aged 36 years, R/o Kundapani Pendri, Police Station Manendragarh, District Surguja (M.P.).

-Vs.-

RESPONDENT : State of Madhya Pradesh through Police Station Manendragarh. Distt. Surguja (M.P.).

5036 8.4.96 A.B. Khan Advocate

CRIMINAL APPEAL UNDER SECTION 374(2) OF CODE OF CRIMINAL PROCEDURE

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 638/1996

Appellant	:	Mahesh Prasad
		Vs.
Respondent	:	The State of Madhya Pradesh (Now Chhattisgarh)

CORAM : HON'BLE SHRI DHIRENDRA MISHRA & HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Present : Shri Suryakant Mishra, counsel for the appellant.
Shri U.K.S. Chandel, Panel Lawyer for the State.

JUDGMENT
(06.07.2006)

Per Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment dated 15.03.1996 passed by learned Additional Session Judge, Manendragarh, Sarguja, in Sessions Trial No. 312/94 by which the learned Additional Sessions Judge has convicted him under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. Case of the prosecution is that the appellant was living with his wife in the house of father-in-law and mother-in-law as *Gharjamai* and he was pressurizing them to get their land recorded in his name and on account of this he used to quarrel with them. On the date of

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incident the accused returned from the market and started beating his son. On being stopped by his wife (PW-1) Nandeshwari Bai he also beat her. In the meanwhile, deceased reached the place of incident and tried to mediate upon which the accused assaulted her with axe on her head as a result of which she fell down on the ground and died. Report of the incident was lodged by PW-1 Nandeshwari Bai on the basis of which merg intimation of Ex.P/4 and First Information Report of Ex.P/3 were recorded against the accused/appellant under Section 302 of the IPC. After performing inquest over the body of the deceased vide Ex.P/5 it was sent for autopsy to Primary Health Centre, Manendragarh where Dr. R.S. Bhojak (PW-6) conducted the post mortem and submitted his report Ex.P/2. In the post mortem report incised wound 10x1/2x1 cm on the head over the upper part of left frontier to parietal bone was found and the bone was also fractured. Blood clot was present under the bone and cause of death was shock and excessive bleeding due to head injury and the death was homicidal in nature. Weapon of offence i.e. axe was seized on being produced by the appellant vide Ex.P/1. Bloodstained and plain soil, bloodstained clothing worn by the deceased at the time of incident were taken into possession vide Ex.P/6. Seized articles were sent for chemical examination and as per the F.S.L. report weapon of offence seized from the accused contained blood. After completing investigation charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Manendragarh who in turn committed the case to the

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Court of Session Judge from where Additional Session Judge received the same on transfer for trial. Charge under Section 302 of the IPC was framed and the appellant abjured the guilt.

3. Prosecution in order to establish the charge leveled against the appellant examined as many as seven witnesses. Thereafter statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he pleaded innocence and false implication. However, the learned trial Court held the appellant guilty and sentenced him as mentioned above.

4. Homicidal death of Nanki Bai is not in dispute. Even otherwise from the injuries present over the body of the deceased as per the post mortem report and the statement of the doctor performing autopsy, homicidal death of Nanki Bai is established.

5. Conviction of the appellant is based on the statements of PW-1 Nandeshwari Bai, PW-2 Sumer Singh @ Nangha and PW-3 Chimta @ Chintamani who are the eyewitness to the incident. PW-1 Nandeshwari Bai, wife of the appellant who was present at the place of incident has stated that initially the appellant quarreled with her and chased her to assault as a result of which she came out of the house and in the meanwhile her husband started searching the weapon. Her mother raised alarm and on hearing the voice of her mother, Ramcharan, Chimta and Nangha reached there and accused out of anger assaulted her mother with axe as a result of

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which her head got gashed. After assault, the appellant ran away from the place of occurrence and he could not be traced even after search. In the cross examination the defence was taken on behalf of the appellant that this witness had not seen the incident as she was hiding. However, this suggestion has been totally denied by her. Further defence taken was that his wife had illicit relationship with one Kadim Khan which was also denied. Statement of this witness is duly corroborated in material particulars by PW-2 and PW-3 who are also the eyewitness to the incident. Sumer Singh PW-2 has stated in his evidence that on hearing the shouts of Mahesh that "murder had taken place", he reached the house of Nanki Bai and Koleshwar and at that time accused Mahesh came with axe and assaulted Nanki Bai with it over her head. Defence has not been able to elicit anything in their cross examination which makes their statements doubtful or untrustworthy.

6. The statements of these witnesses are duly corroborated by the post mortem report in which corresponding injuries have been found on the head of the deceased. It is also corroborated by the promptly lodged First Information Report. Therefore, we are of the considered opinion that the appellant was the author of the crime and finding to this effect given by the trial Court is in accordance with the evidence available on record. Counsel for the appellant at this stage submits that even if it is considered that the appellant was responsible for the offence, it is a case of single injury and the

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incident took place suddenly under the fit of anger without there being any premeditation and therefore the offence does not travel beyond Section 304-II of the Indian Penal Code. However, we are unable to accept this argument advanced on behalf of the appellant firstly because there was no provocation by the deceased to the appellant and the appellant assaulted the deceased brutally from the edge side of the axe over her head as a result of which the axe in fact pierced her head causing grievous head injury. To gather the intention of the appellant the weapon used by the accused, the manner in which and the force with which the assault is made and the part of the body over which assault is made, have to be considered. In the instant case, we find that the appellant without any provocation assaulted Nanki Bai on her head by the edge side of the axe forcefully resulting in instantaneous death.

7. In view of the discussion as above, we do not find any substance in this appeal. Accordingly, the appeal being without substance is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge